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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 0 5 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a general surgery resident. The petitioner had been working as a surgical resident at [redacted] or an affiliated hospital since July 2005. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that the director failed to understand the evidence submitted. For the reasons discussed below, the record does not support counsel's implication that the petitioner is a researcher who has discovered a likely cure for cholera. Rather, the director correctly concluded that the petitioner, at the time of filing, was a surgical resident trainee whose studies had yet to appear in peer-reviewed journals as of the date of filing the petition. With one exception two months before the date of filing, the conferences documented in the record are all local or regional. The record is absent evidence that the petitioner's one national presentation has had any subsequent influence nationally. The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Even on appeal, the record contains no evidence that the petitioner is the author of a single published journal article as of the date of appeal or that his presentations are being cited or otherwise widely used.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A)

> that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Bachelor of Medicine and Bachelor of Surgery from the [redacted]. The petitioner did not submit a formal evaluation of this foreign degree. As such, the AAO cannot determine whether the petitioner's degree is the foreign equivalent degree of a U.S. medical degree. That said, the petitioner did submit certification from the [redacted] for [redacted] that the petitioner "has satisfied all the requirements of the commission." The petitioner's occupation falls within the pertinent regulatory definition of a profession. If the AAO were to accept that the petitioner's degree is a foreign equivalent degree to a U.S. medical degree, the petitioner would qualify as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term

"prospective" requires future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, surgery. The director then stated that while the petitioner's studies were currently unpublished, if published, they could have a benefit that was national in scope. On appeal, counsel asserts that the director erred in determining that the petitioner's work was not national in scope. Specifically, counsel asserts that the petitioner "likely discovered a cure for cholera" and because gastrointestinal surgery is performed beyond the State of Connecticut.

Counsel mischaracterizes the director's conclusion. The director acknowledged that research, if published, could produce benefits that are national in scope. The director's concerns regarding the petitioner's lack of a publication record, while valid, are best discussed under the final prong of *NYSDOT*. At issue in the second prong are only the proposed benefits.

In addressing what benefits would not be national in scope in *NYSDOT*, the AAO stated:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. Significantly, Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, such as by applying the waiver to all physicians or general surgeons. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. The petitioner, while a physician, does not seek a waiver under this provision. Because Congress has made no further statutory changes in the decade since *NYSDOT*, the AAO can presume that Congress has no further objection to the precedent decision.

Applying the above reasoning quoted from *NYSDOT*, 22 I&N Dec. at 217, n.3, to the matter before us, the treatment of patients at a single hospital does not result in benefits that are discernible at the

national level. Thus, the only proposed benefits of the petitioner's work that could be national in scope are those resulting from research, which has yet to appear in a peer-reviewed journal.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted (1) an unpublished study with rats on cholera, (2) an unpublished ten year retrospective chart review on patients with peptic ulcers, (3) an unpublished surgical study of a Sural nerve harvesting device involving four patients, (4) an unpublished retrospective chart review of data on Clostridium infection at [redacted] and (5) two unpublished case studies. None of these manuscripts appeared in peer-reviewed journal or any other medical journal as of the date of filing the petition. In fact, the record still contains no evidence of publication of these manuscripts. Without evidence of dissemination, the petitioner cannot establish the influence of these manuscripts.

The petitioner also initially submitted three poster presentations with no evidence of where the petitioner presented this work. The record of proceedings includes two petitions filed on the same date seeking to classify the petitioner as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act and as an outstanding researcher pursuant to section 203(b)(1)(B) of the Act.[1] The petitioner submitted evidence of the location of his presentations in support of the other two petitions. The petitioner or a coauthor presented the petitioner's work on peptic ulcers at the American College of Surgeons' 94th Annual Clinical Congress in October 2008, two months before filing the petition. The petitioner presented his poster relating to the treatment of cholera with calcimimetics at the Annual Meeting of the New England Surgical Society [redacted] The petitioner also presented his

[1] The director also denied both of these petitions. Those decisions are not before the AAO.

work at annual meetings of the Connecticut Chapter of the American College of Surgeons and his place of employment, [redacted], which is affiliated with [redacted]

Local and regional presentations do not afford the petitioner the opportunity to disseminate his research nationally. Moreover, the petitioner must document not only widespread dissemination but also the influence of the research once disseminated. This influence must be apparent as of the date of filing the petition. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his recently published or as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

The petitioner presented his work at what appears to be a national conference two months before filing the petition. The record contains little evidence that, within these two months (or even as of the date of appeal), this presentation had notably influenced the field. For example, the record contains no citations of any of the petitioner's presentations or letters from independent clinics or hospitals who have adopted the petitioner's findings into their standard practices. The only letter affirming any reliance on this work is a letter from a local colleague discussed below.

The record contains a certificate from [redacted] awarding second place to the petitioner's poster presentation at the hospital's Research Day 2009. This certificate postdates the filing of the petition and, thus, cannot establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Regardless, the certificate represents local employer recognition.

On appeal, counsel suggests that the petitioner's training opportunity at [redacted] is, itself, relevant evidence of eligibility. The AAO will not presume an influence in a field by association with a distinguished institution. It is the petitioner's burden to demonstrate his actual influence.

The remaining evidence consists of letters. The letters from the petitioner's colleagues prior to entering the United States simply confirm his employment as a surgeon and physician and medical training in Pakistan and the United Kingdom. As discussed above, the petitioner's services as a physician are not national in scope. *NYSDOT,* 22 I&N Dec. at 217, n.3.

The petitioner submitted a single letter from the [redacted] that may be from an independent reference, letters from colleagues in Connecticut, and a letter from a colleague at [redacted] Hospital where the petitioner first worked in the United States. [redacted] of

the General Surgery Residence Program at [redacted] asserts generally that the petitioner "possessed all the characteristics of an outstanding physician" but does not provide any examples of the petitioner's innovations or influence in the field. Rather, [redacted] notes the shortage of surgeons. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[redacted] at [redacted] University School of Medicine, confirms that the petitioner performed a research fellowship in [redacted]. [redacted] continues:

> During the course of his studies, [the petitioner] was involved in identifying the role of the calcium sensing receptor in modulating fluid transport in the ileum and that this mechanism could prevent secretory diarrhea, a deadly illness that kills over 5 million children per year. During the course of these studies, [the petitioner] developed a novel and new method to measure fluid transport in isolated segments of intestine using a 2-electrode approach. This technology was a major breakthrough as it now allows investigators to characterize the effects of drugs, and toxins on fluid and electrolyte transport. I wish to point out that these discoveries will have important clinical implications for developing cures to a variety of intestinal diseases and will lead to new clinical initiatives being devised to prevent a variety of clinical problems from inflammatory bowel disease to ischemic injury of the intestine, as well as be a model for secretory diarrhea treatment. These various studies have been submitted to national meetings and [the petitioner] has been invited to present his data at both podium discussions and in poster presentations. We plan to submit these various studies for publication in peer reviewed journals in the near future.
>
> I would like to comment that [the petitioner] has developed important new technologies to conduct in vitro assays of gastric acid secretion and has applied these to his research. Further, [the petitioner] is the only investigator in the world that is presently looking at these effects on intestinal transport and clearly is providing important new information that will have long term clinical ramifications not only in the United States but world wide.

[redacted] does not state, as counsel suggests, that the petitioner has discovered a likely cure for cholera, a discovery that would be expected to garner significant attention in the mainstream media. The AAO acknowledges that media coverage is not a requirement for the classification sought. Nevertheless, if the petitioner is going to advance the claim to have discovered the first likely cure for cholera, the AAO cannot ignore that type of discovery tends to garner widespread media attention. Without such evidence, the claim appears hyperbolic.

[redacted] actually states that the petitioner identified the role of calcium sensing receptors and speculates that this mechanism could prevent the type of secretory diarrhea associated with cholera. [redacted]

[redacted] does not suggest that any pharmaceutical company or other laboratory is preparing to conduct clinical trials in humans based on the petitioner's work. In fact, the record contains no evidence even on appeal of any outside interest in this work. Specifically, the record still lacks evidence that any peer reviewed journal has accepted this work for publication, that the work has garnered any media attention or that any laboratory is planning clinical trials in humans despite the fact that the petitioner presented the study in a poster presentation at a regional conference nearly four years ago.

[redacted] does not suggest that any independent laboratory has adopted or is considering adopting the petitioner's new method to measure fluid transport to characterize the effects of drugs. Thus, [redacted] assertion that this technology will lead to new treatments appears highly speculative. The fact that the petitioner is the only investigator looking at "these effects on intestinal transport" does not create a presumption that the petitioner's results are significant and, in fact, suggests that, as of yet, he is not influencing the field to any degree.

As [redacted] acknowledges, the petitioner's work remains unpublished in peer-reviewed journals. While [redacted] refers to presentations "submitted to national meetings" and invitations to present the petitioner's work at meetings generally, it remains that the record documents only a single presentation at a national meeting and the record lacks any evidence of the impact of this presentation at the national level.

[redacted] at [redacted], characterizes the petitioner's work at [redacted] University and [redacted] Hospital as "training." [redacted] asserts that the petitioner discovered that calcimimetic R-568 can block the calcium sensing receptor implicated in secretory diarrhea and credits the petitioner "with being the first person in the world to discover a potential treatment for cholera." USCIS need not accept primarily conclusory assertions.[2] Once again, for the reasons discussed above, the record is simply not consistent with a major breakthrough in the treatment of cholera.

[redacted] then praises the petitioner's surgical work at [redacted] As stated above, providing surgical services to patients at a single hospital does not produce benefits that are national in scope. [redacted] then asserts that the petitioner has been involved in other clinical research projects and "can be credited with high impact results." [redacted] does not identify any of these results or explain their influence in the field beyond Connecticut.

In a second letter in the record, [redacted] discusses the petitioner's duties as [redacted] and his future training opportunity at the University of Tennessee, Memphis. This discussion has no relevance to the petitioner's influence in the field as of the date of filing or even subsequently. [redacted] also discusses the petitioner's pending research. [redacted] does not explain how this work has already influenced the field. Instead, [redacted] discusses the potential of this work.

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[2] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

On appeal, [redacted] reiterates previous assertions about the importance of the petitioner's work on cholera and predicts that it will be published [redacted] Such speculation does not establish the petitioner's influence as of the date of filing.

[redacted] of the Program in Surgery at [redacted] Hospital, asserts that the petitioner "is about to begin" the fourth year of his surgical residency and that the petitioner would "serve [redacted] year 2009-2010." [redacted] asserts that the petitioner has presented his work at three state conferences, one regional conference and two national conferences. The record documents only a single national presentation. Regardless, a presentation only establishes the dissemination of the petitioner's work. The petitioner must demonstrate the ultimate influence of his work. [redacted] does not provide any examples of such an influence.

[redacted] at [redacted], asserts that the petitioner "developed a novel instrument to harvest the sural nerve (a nerve in the leg that is commonly used for reconstructive purposes) in a minimally invasive fashion." [redacted] listed as a coauthor of this published study, concludes: "This complicated study is now being prepared for submission and will no doubt have a profound impact on practice." The unpublished manuscript of this study states: "From January 2004 to August 2005, four patients underwent sural nerve harvest using the neurotome device." The petitioner did not begin working for a [redacted]-affiliated hospital until July 2005. [redacted] does not explain how the petitioner can be credited with having "developed" an instrument in use at the [redacted] Center as early as January 2004, before his employment there.[3] Regardless, the letter lacks evidence that the device is being used or evaluated for use at a number of independent institutions nationally based on this unpublished study.

[redacted] whose practice includes [redacted] Hospital, asserts that he is familiar with the petitioner's research on the influence of fungemia on outcomes in ulcer patients. [redacted] asserts that based on the petitioner's research, all of [redacted] patients receive preoperative broad spectrum anti-biotic and anti-fungal medications. This letter does not demonstrate the petitioner's influence beyond Connecticut.

[redacted] at the [redacted] supports the petition and suggests he learned of the petitioner's work at a conference. [redacted] does not provide his curriculum vitae with his previous affiliations. [redacted] discusses the petitioner's presentation on Clostridum Difficile Infection and asserts that the petitioner's study reflected that patients admitted from extended care facilities should be more closely observed and would benefit from an aggressive, earlier surgical approach. [redacted] asserts that the [redacted] follows these recommendations. This study, however, reviewed chart data from prior to the petitioner's employment at a [redacted]-affiliated hospital. While data review is useful, [redacted] does not explain how the review of earlier data reflects on the petitioner's abilities as a clinical researcher.

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[3] The authors' byline in the unpublished manuscript indicates the research originated [redacted]

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of significant breakthroughs without providing specific examples of how those breakthroughs are already influencing the field beyond Connecticut. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[4] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition.

Ultimately, the petitioner is a talented surgeon whose benefits as a surgeon would not be national in scope as interpreted in *NYSDOT*, 22 I&N Dec. at 217, n.3. While the petitioner has been involved in research that his colleagues believe will be significant, that research has yet to be widely disseminated such that the AAO is able to gauge its influence in the field. The record contains no evidence such as citations or letters from independent hospitals and clinics nationwide affirming their adoption of his findings in their official operating procedures, demonstrating any influence beyond Connecticut.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not

[4] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.